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THE KOHALA WATER SCHEME GOES OVER

Congressional Authority Must Precede Granting.

ACTION OF EXECUTIVE YESTERDAY
NUMBER OF INTERESTED PERSONS ATTEND MEETING ON THE SUBJECT.

Letters From Washington Put the Territorial Government "Wise" as to Its Duties—Sanction by Congress Will Be Necessary.

The Kohala water scheme of Colonel J. W. Jones has been sidetracked until such time as Congress can be heard from in regard to the authority of the Territory to grant such franchises. This culmination was reached in the Executive meeting yesterday after considerable discussion by heads of the bureau and a number of outside persons interested in the project. F. M. Swanzy, H. Focke, Palmer Woods, F. S. Dodge, F. M. Hatch, S. M. Ballou, Henry Holmes, E. B. McClanahan, Colonel J. W. Jones, A. C. Gehr and H. B. Gehr were among the number present.

Colonel Jones made an extended statement of the situation and denounced the criticism of an afternoon paper as unfair and misleading. He stated that he had filed with Governor Dole a list of the eastern capitalists behind the project, and asked Governor Dole if he was not satisfied as to their ability and integrity. The Governor replied that while he was not personally acquainted with the gentlemen named in the list he believed them to be in every way responsible. So far as the Territory was concerned the trouble was not so much regarding the money behind the project, but the authority of the Territory to act was in question. It had been brought up by the following letters from the Interior Department, just received:

Department of the Interior, Washington June 14, 1901.
The Governor of Hawaii, Honolulu, Hawaii.

Sir: Your letter of the 22d ultimo has been received, in which you state that an application has been presented in behalf of Mr. Samuel Parker for a license, for a period of ninety-nine years, to build, construct, maintain and operate, for the conveyance of water for irrigation purposes, a ditch, on a high elevation over Government lands, in the district of North Kohala, between and including Puaupua and the northern portion of Hawaii, and also a ditch on a lower elevation over Government lands, situated in said district between and including Miliwai and the northern portion of the island of Hawaii.

You state that the water which is sought to be diverted by the proposed ditches, now flows into the sea and cannot be utilized upon the lands through which it runs; that the enterprise meets with your approval; and that it is your intention to execute a license (draft of which accompanies your letter) unless advice to the contrary are received from this Department.

In response thereto, I have to state that unless the granting of a license of this character is specifically authorized by existing laws, you would not be warranted, in my judgment, in granting the privileges sought by Mr. Parker. If you do not find that you are specifically authorized to grant licenses of this character and in your opinion it will be to the best interests of Hawaii that such authority should be vested in the Governor that fact should be brought to the attention of the Department in your next annual report, with a view to the enactment of the requisite legislation by Congress. Very respectfully,
E. A. HITCHCOCK, Secretary

Department of the Interior, Washington D. C., Sept. 11, 1901.
The Governor of Hawaii, Honolulu, Hawaii.

Sir: The attorneys for Mr. Samuel Parker have asked this Department to reconsider the matter of the application for a license for a period of ninety-nine years to construct, maintain and operate ditches over the Government lands in the district of North Kohala, to be known as the "Upper Kohala ditch" and "Lower Kohala ditch" respectively, and have presented arguments in support of such request.

This matter was originally submitted by your letter of May 22, 1901, to which this Department made reply under date of June 14, 1901.

In the argument now submitted, it is pointed out that this Department has held that the Act of Congress of April 30, 1901 (31 Stat. 14), entitled "An Act to provide a government for the Territory of Hawaii," continues in force, except as herein modified, the land laws of the former Republic, and contended that those laws give the Commissioner of Public Lands the right to grant land licenses of the nature in question without restriction as to time or term of years.

The first use of the phrase "land license" in the land laws of Hawaii is found in section 180, Civil Laws, where the term is defined as follows:

"A land license means a privilege granted by the Government for the occupation of land for certain special purposes, such as the cutting and removal of timber, the removal of soil, gravel or stone."

The only other places pointed out in the Civil Laws where the term is used are in section 193, where it is provided that the Commissioner of Public Lands shall have power to make rules and regulations "for surveying public lands, for the protection of forests and reservations of forest growth, for the granting of land licenses" etc. and section 198, where sub-agents are given the power, among other things:

"To enforce contracts respecting sales, leases, licenses or other disposition of public lands."

"To recover rents, purchase money and other moneys due the Government in respect of any sales, leases, licenses or other disposition of public lands, or for use and occupation thereof."

Upon these provisions is predicated the proposition, as formulated in the letter asking a reconsideration of the matter that "the Land Commissioner of the

Territory of Hawaii, with, at most, the approval of the Governor, has express authority under existing laws to grant the license as requested.

"A license in relation to real property usually imports authority to do a certain act or series of acts upon the land of another without possessing any estate in the land. The example given in section 180 of the Hawaiian laws, supra, show that this is the sense in which the word is used there. In the instance under consideration the privileges sought are more than this. It would amount to a grant of a part of the public domain and also of a valuable and necessarily exclusive franchise. The laws referred to do not expressly authorize the granting of such privileges. Laws like this which operate to invest individuals with special privileges are to be strictly construed so as to exclude from the operation thereof everything but clearly indicated as 'intended to be included'."

"There is nothing in the laws cited as sustaining the proposition to say of them that it is clearly indicated that it is the intent to vest the officers in charge public lands of Hawaii with authority to confer upon an individual an appropriate to his own use and for a period of 99 years (in effect permanently) a portion of the public domain."

"The care and control of the public domain of the United States is lodged in the Congress, and the executive officers have only such powers in relation thereto as are given them by the acts of that body. The act of April 30, 1900, supra, declaring 'that the laws of Hawaii relating to public lands, the settlement of boundaries and the issuance of land commission awards except as changed by this act shall continue in force until Congress shall otherwise direct' did not enlarge the powers of the officers charged with duties and powers in connection with the public lands, or confer upon such officers authority not theretofore existing under the laws thus continued in force."

"The assertion that the granting of this privilege would be of great benefit to the government and to the people of the Territory would be of importance if the question were as to the exercise of existing authority, but it is not important here when the question is as to the existence of any authority in the premises. A further examination of this matter having led to the conclusion that there is no authority under law as it now stands to grant the privilege asked for, the request that this Department authorize the Governor and the Land Commissioner of the Territory to execute the license in accordance with the terms in which application for the same has been made, must be and hereby is denied."

"Very respectfully,
"THOMAS RYAN,
"Acting Secretary."

The matter will, therefore, go over until Congress can act upon the authority of the Territory to grant such franchises. In the meantime, it is common talk in the streets that Thurston and the Attorney General, Colonel Jones, want the project, because Jones and Gehr were recognized as being identified with the Kohala railway enterprise. Thurston is a promoter of the Olua railway, which has what privileges at Hilo and wants more.

ADVERTISED LETTERS.

List of Letters remaining uncalled for at the General Delivery of the Honolulu Postoffice up to September 28, 1901:

Anderson, Geo. P.	Layng, R. J.
Ainsworth, Stella C.	LeClaire, Eugene
Albhorn, Henry	Lennox, J.
Acher, Wm.	Leach, J.
Alker, Geo. E. H.	Lewis, Chas.
Bal, Louise	Lighthouse Keeper
Bauer, Geo. H.	Long, Miss Jack
Bartholomew, Alice	Loken, W. H.
Bailey, Mrs. H. S.	Ludwig, H.
Bal, Louise	McPherson, Marie
Behre, Fred J.	McCoy, J. M.
Bolle, Miss L. I.	McCoy, Gerald
Brown, W. R.	McDonald, P.
Brown, F. J.	McKay, L.
Brown, E. A.	Marx, Margaret
Brown, J. O.	Morris, Annie
Burns, Wm.	Moses, J. B.
Burns, Geo. H.	Moss, W. H.
Brown, T. J.	Morehead, E.
Branson, L. C.	Nelson, Maria
Bush, Mrs. E. M.	Nelson, Ida E.
Campbell, J. G.	Ogilvie, R. L.
Campbell, Neil H.	Ousted, Edwin
Calkins, Wm.	Pratt, R. T.
Carson, F.	Paul, Eva
Chalmers, Chas. O.	Patterson, L. S.
Chalmers, Geo. C.	Patterson, Chas.
Clark, Ellen	Price, W. H.
Cranberg, J.	Purdy, W. A.
Cummings, Jas. H.	Remhardt, H.
Danford, Wm.	Richard, F.
Dowsett, Ed.	Richardson, Geo. J.
Duncan, Adam	Richard, R.
Eames, Hannah N.	Robinson, Elizabeth
Eddy, Lizzie L.	Robinson, Clarence
English, Jno.	Robinson, H.
Ferguson, A. R.	Saith, J. W.
Fleming, Thos.	Sorenson, Mrs.
Frank, Henry	Sparks, Edward
Gen'l Hdw. Co.	Spencer, Mrs. J. D.
Green, L. C.	Spencer, Joseph
Harper, Alice	Stearns, Bertha
Hawley, Chas. H.	Stone, E. D.
Higgins, J. H.	Stewart, Archie
Howard, C. A.	Sykes, Albert
Hyde, Cornelia A.	Taylor, Mrs.
Johnston, Mrs.	Thompson, Mrs. J. E.
Jordan, Mr.	Van Anglen, A.
Jones, Chas. R.	Warren, Marcia
Jordan, Florence A.	Wargen, Chas. D.
Jessett, P. A.	Walker, J. H.
Jordan, P. J.	Wadsworth, R. A.
Kennedy, Alexander	Walton, H. P.
Kelly, Thos.	Wilson, Geo. C.
Kech, F.	Wilson, T. H.
Keith, Mrs. G. W.	Wills, N.
Kee, G.	Williams, Mrs. Ellen
Klugel, Harry A.	Wilson, Chas.
Kostich, Edith	Walton, H. P.
Konak, Jack	

When calling for above mail, please ask for "Advised Letters."

JOSEPH M. OAT, Postmaster.

An alarming situation exists in the town of Grimsby, England, where a mob of locked-out fishermen attacked, wrecked and set fire to the new offices of the "Owners' Federation," September 18th, in which the owners of the fishing fleet were holding a meeting. The owners escaped and the fire was extinguished.

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